

SUPPLEMENTARY CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION *WHEN
AN ARCHITECT IS TO ADMINISTER THE
PROJECT*

The following supplements the "General Conditions of the Contract for Construction," AIA Document A201, Fourteenth Edition, 1987. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

Article 1 GENERAL PROVISIONS

1.1 (*Basic Definitions*)

1.1.2 (*The Contract - Limitation on persons affected*) After the last sentence, insert: "Except as provided by the preceding sentence or by Paragraphs 5.3 and 5.4, the Contract is not intended to benefit, or to create a cause of action in favor of, any person, firm, or corporation, other than the Owner and the Contractor. The recitation of duties of the Architect in the Contract Documents (e.g., Subparagraph 9.42) shall not be construed to reduce the Owner's rights against the Architect or the Architect's duties to the Owner."

Add the following new Subparagraphs:

1.1.8 (*'Approved,' 'satisfactory,' 'proper' or 'as directed'*) When the words 'approved,' 'satisfactory,' 'proper' or 'as directed' are used, this refers to approval, satisfaction, determination, or direction by the Architect, unless the context otherwise requires.

1.1.9 (*Provide*) The word 'provide' and its forms and derivatives means to properly fabricate, complete, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

1.1.10 (*Knowledge, recognize, and discover*) "Knowledge," "recognize," and "discover," their respective forms and derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence required by the Contract Documents. The expression "reasonably inferable" and similar terms in the Contract Documents shall mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.11 (*Persistently fails*) The expression "persistently fails" and other similar expressions,

as used in reference to the Contractor, shall mean any act or omission which causes the Owner or Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum, or in substantial compliance with the requirements of the Contract Documents.

1.2 (*Execution, Correlation and Intent*)

1.2.2 (*Contractor to evaluate conditions and to be responsible for safety*) Add to the end: "The Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including (1) the location, condition, layout, and nature of the site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools, and equipment, and (5) other similar issues. To the extent that it may be appropriate for the proper execution of its subcontract, the Contractor shall cause each Subcontractor to do the evaluation described in the preceding sentence. The Owner assumes no responsibility or liability for the physical condition or safety of the site or any improvements located on the site. Except as set forth in Subparagraph 10.1.2, the Contractor, and not the Owner, shall be responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.2.

1.2.3 (*Parties to effectuate intent of Contract Documents, and Contractor to provide better quality*) Add to the end: "The Owner and the Contractor shall do all acts and shall make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the provisions of the Contract Documents. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement. This Subparagraph 1.2.3, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 3.2 and 3.7."

1.2.3.1 (*Interpreting Drawings*) On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings.

1.2.3.2 (*Contractor to verify measurements*) Before ordering any materials or doing any Work, the Contractor shall verify measurements at the site and shall be responsible for the

correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the Work.

1.2.3.3 (*Minor changes to be approved*) If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit drawings of such departure for the approval by the Architect before making the change.

1.2.5 Add to the end:

1.2.5.1 (*Compliance with Standards and Specifications*) Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present a statement, in the form reasonably required by the Architect, from the manufacturer when requested by the Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.

1.2.5.2 (*Or equals*) Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted as a Modification.

1.3 (*Ownership and Use of Architect's Drawings, Specifications and Other Documents*)

"1.3.1 (*Additional use of documents*) At the end of 1.3.1, add: "The contract between the Owner and Architect may permit the Owner some additional uses of the Drawings, Specifications, and other documents prepared by the Architect (hereafter in this Subparagraph 1.3.1 referred to as 'Said Items'). If the Owner, in exercising the Owner's rights and privileges with respect to Said Items, specifically requests the Contractor to use Said Items, such use in carrying out that request will not violate this Subparagraph. This Subparagraph 1.3.1 is not intended to create any rights in the Architect as against the Owner, although this Subparagraph may create rights in the Architect as against the Contractor and others referred to in this Subparagraph."

1.5 (*Interpretation*)

1.5.2 (*Pronouns, titles, "include" and its derivatives*) Create a new Subparagraph: "Unless the context otherwise requires, all personal pronouns used in the Contract Documents shall include all other genders, and

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the singular shall include the plural and vice versa. Titles and headings of articles, paragraphs, subparagraphs, sections, subsections, parts, subparts, etc., in the Contract Documents are for convenience only, and neither limit nor amplify the provisions. The use in the Agreement, General Conditions, and Supplementary Conditions of "include" in its various forms and derivatives shall mean "without limitation" unless the context otherwise requires."

1.5.3 (*Severing invalid provisions*) Create a new Subparagraph: "Whenever possible, each provision of the Contract Documents shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of the Contract Documents is determined by a court of competent jurisdiction to be invalid or unenforceable, only such provision shall be ineffective, without invalidating the remaining provisions, which are hereby deemed severable."

Article 2 (OWNER)

2.1 (*Definition*)

2.1.1 (*City as Owner*) Delete the last sentence and replace with: "The term 'Owner' refers to City of Durham. The City Manager is hereby designated as the Owner's representative. The City Manager is the only individual authorized to act on the Owner's behalf under or in connection with the Contract, unless the City Manager designates a new representative in writing. The authority of the City Manager and designated representative(s), if any, includes stopping Work under Subparagraph 2.3.1 and executing Modifications."

2.1.2 (*Owner's title to the site*) Delete entirely, and replace with: "The Owner upon reasonable written request made from time to time shall furnish to the Contractor in writing a statement setting forth, to the extent of the Owner's knowledge, the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein."

2.2 (*Information and services required of the Owner*)

2.2.1 (*Owner's financial ability*) Delete entirely.

2.3 (*Owner's Right to Stop the Work*)

2.3.1 (*Owner's Right to Stop the Work*) In line 4, after "Contract Documents," insert: "or otherwise fails to comply with the Contract Documents,". At the end, delete ", except to the extent required by paragraph 6.1.3."

2.4 (*Owner's Right to Carry Out the Work*)

2.4.1 (*Use of Modification*) In line 13, delete "Change Order" and replace with

"Modification".

Article 3 (CONTRACTOR)

3.2 (*Review of Contract Documents and Field Conditions by Contractor*)

3.2.2 Add the following:

3.2.2.1 (*Exactness not guaranteed*) The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Owner or Architect, or the work installed by other contractors, is not guaranteed by the Owner or Architect.

3.2.2.2 (*Contractor to verify*) The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of the Work to be done by the Contractor with the rest of the Project, it shall verify at the site all dimensions needed to make proper interconnections. The Contractor shall promptly rectify all errors due to its failure to so verify all such grades, elevations, locations, or dimensions, without any additional cost to the Owner.

3.2.4 (*Sufficiency of Contract Documents*) Create a new Subparagraph: "The Contractor acknowledges: (1) the Contract Documents are sufficient to determine the cost of the Work; (2) it has had sufficient opportunity to visit the site and to examine all conditions affecting the Work; (3) it has had a sufficient opportunity to examine the Contract Documents for errors, inconsistencies, and omissions; and (4) the Contract Documents are complete and unambiguous."

3.3 (*Supervision and Construction Procedures*)

3.3.1 (*Compliance with laws and regulations*) Add to the end: "Except as may be otherwise provided by Paragraph 3.7, the Contractor shall carry out and perform all Work and perform under the Contract Documents in compliance with all applicable laws, statutes, codes, rules, and regulations."

3.3.2 (*Responsibility for Sub-subcontractors*) In the third line, insert: "Sub-subcontractors and their agents and employees," after "employees,".

3.4 (*Labor and Materials*)

3.4.3 (*Request for substitutions*) Create a new Subparagraph: "See Subparagraph 1.2.5.2. By making a request for substitutions, the Contractor:

3.4.3.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

3.4.3.2 represents and covenants that the Contractor will provide the same warranty for the substitution that the Contractor would have provided for the original product;

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3.4.3.3 certifies that the cost data presented are complete and include all related costs under this Contract, as well as include license fees, royalties, and claims of other persons, except the Architect's redesign costs, and the Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; and

3.4.3.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.5 (*Warranty*)

3.5.1 In the 9th line, delete the word "may" and substitute the word "shall". In the 11th line, delete "modifications not executed by the Contractor,".

3.5.2 Create a new Subparagraph: "The Contractor shall perform the Work in such manner so as to preserve all manufacturer's warranties relating to materials and labor used in the Work."

3.7 (*Permits, Fees and Notices*)

3.7.1 (*Providing copies*) Add to the end: "Promptly after obtaining such permits, licenses, certificates, and approvals, the Contractor shall furnish the Owner and Architect photocopies of those documents."

3.7.2 (*Meaning of regulations*) Add to the end: "In this Paragraph 3.7, 'regulations' includes all requirements of public authorities."

3.8 (*Allowances*)

3.8.2.4 In lines 2-3, delete "by Change Order". In line 3, delete "Change Order" and replace with "adjustment".

3.9 (*Superintendent*)

3.9.1 (*Selection of superintendent; confirmation of communications*) In the second line, after "superintendent", insert: "against whom the Owner makes no reasonable objection". Delete the last two sentences, and replace with "Communications will be confirmed in writing on request."

3.10 (*Contractor's construction schedule*)

3.10.1 (*Multi-prime projects*) Insert after the first sentence: "If the multi-prime contracting method is used, the construction schedules submitted by the separate contractors (including the Contractor) pursuant to this Subparagraph 3.10.1 must be approved by the Owner and Architect before such schedules are effective."

3.10.4 (*Avoiding interference with Owner and others*) Create a new Subparagraph: "The Owner shall have the right to direct a postponement or rescheduling of any date or

time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises to hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and may be grounds for an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (2) such rescheduling or postponement is required for the convenience of the Owner."

3.11 (*Documents and samples at the site*)

3.11.1 At the end, delete "upon completion of the Work" and replace with "in accordance with Subparagraph 9.10.2."

3.12 (*Shop Drawings, product data and samples*)

3.12.9 (*Revisions not requested by Architect*) Add to the end: "This shall be done in a prominent manner so as to ensure that the Architect will see the revisions that the Architect had not requested."

3.12.11 (*Certification of performance criteria*) Delete entirely and replace with: "When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person providing the certification with full information on the relevant performance requirements and on the materials, systems, and equipment that are expected to operate at the site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the site. The Architect shall be entitled to rely upon the accuracy and completeness of such certificates."

3.12.12 (*Shop Drawings*) Create a new Subparagraph: "The Contractor shall see that all shop drawings for any architectural, structural, mechanical, or electrical work have been approved by the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer."

3.13 (*Use of Site*)

3.13.2 (*Storage of materials and equipment*) Create a new Subparagraph: "The Contractor

shall not store any materials or equipment on the site except those which are to be used directly in the Work. After equipment is no longer required for the Work, the Contractor shall promptly remove it from the site. The Contractor shall provide suitable protection of materials and equipment stored at the site from adversity of the kinds that may be reasonably expected, and from weather, theft, and other damage."

3.13.3 (*Signs*) Create a new Subparagraph: "Neither the Contractor nor the Subcontractors nor the Sub-subcontractors may erect any sign on the site without the prior written consent of the Owner. That consent may be withheld in the sole discretion of the Owner."

3.13.4 (*Access to site; interference with neighbors; interference when partial occupancy occurs*) Create a new Subparagraph: "The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site. The Contractor shall perform the Work in such a manner that public areas adjacent to the site shall be free from all debris, building materials, and equipment. Without limitation of any other provision of the Contract Documents, the Contractor shall minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site and (2) the portion of the Work in which partial occupancy or use takes place, as more specifically described in Paragraph 9.9."

3.13.5 (*Contractor's use of Owner's facilities; insurance requirements*) Create a new Subparagraph: "The Contractor shall not permit any workers to use any existing facilities at the site, including lavatories, toilets, entrances, and parking areas, other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, if the Owner is using or occupying areas adjacent to the Work, the Contractor shall comply with all regulations promulgated by the Owner in connection with the use and occupancy thereof, as amended from time to time. The Contractor shall immediately give notice to the Owner if during the performance of the Work, the Contractor finds compliance with any portion of such regulations to be impracticable, setting forth the problems of such compliance. The Owner shall use reasonable efforts to accommodate the Contractor's concerns, if in the Owner's discretion it is reasonably practical to do so. The Contractor shall also comply with all insurance requirements applicable to use and occupancy of the site."

3.15 (*Cleaning up*)

3.15.2 (*Right to cure*) Add to end: "The Owner shall give the Contractor a reasonable

opportunity to cure before the Owner exercises its rights under the preceding sentence."

3.17 (*Royalties and patents*)

3.17.1 (*Includes copyrights, trade secrets, and other proprietary information*) In the 3d line, after "patent rights", insert: "or violations with respect to copyrights, trade secrets, or other proprietary information". In the 9th line, after "patent", insert: "copyright, trade secret, or other proprietary right".

3.18 (*Indemnification*)

3.18.1 (*Indemnification*) Delete and replace with:

"(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of, performance of the Work as a result of acts or omissions of the Contractor or Subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection 'a', the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the Owner.

"(b) Definitions. As used in subsections 'a' above and 'c' and 'd' below -- 'Charges' means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (included within 'Charges' are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution or other environmental or pollution laws and regulations -- including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items or materials that are involved in performance of the Work).

'Indemnitees' means the Owner and its officers, officials, independent contractors, agents, and employees, but does not include the Contractor.

"(c) Limitations of the Contractor's Obligation. Neither Subsection 'a' of this Subparagraph 3.18.1 nor any other provision of the Contract shall be construed to require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

"(d) Nothing in subsections 'a', 'b', or 'c' in this Subparagraph 3.18.1 shall affect any warranties in favor of the Owner. This Subparagraph 3.18.1 is in addition to and shall

be construed separately from any other indemnification provisions that may be in this Contract.

"(e) Survival. This Subparagraph 3.18.1 shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract."

3.19 (*Equipment Manuals*)

3.19.1 (*Equipment Manuals*) Create a new Subparagraph: "The Contractor shall assemble for the Architect's approval and transmittal to the Owner two (2) complete copies in loose leaf binders of all operating and maintenance data from all manufacturers and suppliers whose equipment is installed in the Work. Unless the information is contained in the data referred to in the preceding sentence, the Contractor shall also prepare, and include in those binders, a checklist or schedule showing the type of lubricant to be used at each point of application, and the intervals between lubrication for each item of equipment. The Contractor shall comply with Subparagraph 9.10.2."

Article 4 (ADMINISTRATION OF THE CONTRACT)

4.1 (*Architect*)

4.1.2 (*Changes in duties*) Delete entirely.

4.1.4 (*No arbitration*) Delete entirely.

4.2 (*Architect's administration of the Contract*)

4.2.11 (*decisions*) In the final sentence, insert "or decisions" after "interpretations" both times it appears.

4.3 (*Claims and disputes*)

4.3.1 (*Form of Claim*) Add to the end: "Any notice of Claim or reservation of Claim (see Subparagraph 4.3.3 as amended by the Supplementary Conditions) must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim."

4.3.2 (*Time limits*) In the third sentence, delete "(2) the Architect...time limits," and replace with "(2) the Architect has not rendered, or has stated unequivocally that the Architect will not render, a decision within the time limits that apply either pursuant to the Contract or as specially agreed to by the Owner and the Contractor for the particular claim,".

4.3.3 (*Notice of Claims; mitigation of damages; reservation of Claim*) Add to the end of the first sentence: "Once a party recognizes that it may make a Claim, it shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of the

potential Claim, including potential Claims in connection with concealed or unknown conditions, or within the period set forth in Subparagraph 4.3.6, whichever period is shorter. The potential claimant shall cooperate with the Architect and the party against whom the potential Claim may be made in an effort to mitigate damages, delay, or other adverse consequences arising out of the condition which is the cause of the potential Claim. This duty to mitigate continues after the Claim is actually made." Add to the end of this Subparagraph 4.3.3: "Before a party has accepted final payment, it may reserve a Claim by written notice within the time limits set forth in this Subparagraph 4.3.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 4.4 shall not commence until a written notice from the claimant activating the Claim is received by the Architect."

4.3.4 (*Claims during suspension or termination*) Add to the end: "The requirement of proceeding shall not apply during a period of suspension or termination by the Owner."

4.3.5 (*Waiver*) Delete "constitute a waiver of Claims by the Owner except those arising from" and replace with "not constitute a waiver of Claims by the Owner including those arising from".

4.3.6 (*Concealed or unknown conditions*) Add to the end: "No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions that were disclosed, or which should have been disclosed, by the prior inspections, tests, reviews, or preconstruction services which the Contractor performed, or had a duty to have performed, in connection with the Project."

4.3.7 and 4.3.8.1 (*Limits on Claims*) In the second line of each, delete "written notice" and replace with "a Claim shall be made". Add to the end of each: "NO CLAIM PERMITTED UNDER THIS SUBPARAGRAPH SHALL BE VALID UNLESS MADE AS REQUIRED BY THIS SUBPARAGRAPH AND OTHER PROVISIONS OF PARAGRAPH 4.3. CLAIMS NOT MADE IN ACCORDANCE WITH THESE REQUIREMENT ARE WAIVED. THESE REQUIREMENTS, INCLUDING AS TO TIME, ARE OF THE ESSENCE OF THE CONTRACT DOCUMENTS. Accordingly, no course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no assertion that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such

unjust enrichment, shall be the basis for any Claim to an increase in the Contract Sum or in the Contract Time."

4.3.8.2 (*Weather Claims*) Add to the end:

The weather conditions shown in the chart below can be reasonably anticipated and will not be considered abnormal. For example, if the Contractor submits a claim for additional time on the sole basis of adverse weather conditions in January, and the factual records submitted show that the actual January in which the Contractor worked had 9 days on which the precipitation exceeded 0.1 inches, the extension of time will not be granted because the chart says that it is expected that there will be 10 days in January with at least that much rain. If the factual records show that the actual January in which the Contractor worked had 12 days on which the precipitation exceeded 0.1 inches, the Contractor will not need to show that the precipitation was abnormal and could not have been reasonably anticipated, but will still need to show the adverse effect on the scheduled construction. Unless the City agrees in writing otherwise, the weather conditions must be shown by use of data, submitted by the Contractor, from either the National Weather Service (NWS) for Raleigh, N. C. or NWS readings from a location closer to the site than Raleigh, and not by use of weather readings on the site or by the Contractor. For adverse weather claims, the Contractor shall use the claim form ("CLAIM FOR ADDITIONAL TIME ON THE BASIS OF ADVERSE WEATHER CONDITIONS") in the contract documents. The parties are bound by the provisions on that form. In order to make a claim for inclement weather days the form must be submitted by the 10th day of the month after the month as to which the claim is made. In order to make this claim for Saturdays, Sundays, and City of Durham holidays, the Contractor must have notified the City representative (Project Manager) by 3:30 PM o'clock three days in advance of the day of the Contractor's intent to work on a specific Saturday, Sunday, or holiday. Notwithstanding Supplementary Conditions 8.1.4, if the day on which the 3-days notice is to be given is a Saturday, Sunday, or City of Durham holiday, the notice shall be given by the first day before that Saturday, Sunday, or holiday that is not a Saturday, Sunday, or City of Durham holiday.

	Number of days with 0.1 or more inches precipitation	Number of days on which the temperature is never above 32 degrees F.
Jan.	10	3
Feb.	10	1
March	10	0
April	9	0
May	10	0
June	9	0
July	11	0
August	10	0
Sept.	8	0
Oct.	7	0
Nov.	8	0
Dec.	9	0

4.4 (Resolution of Claims and disputes)

4.4.4 (Finality of decision; arbitration) In the first sentence, in lines 5-6, delete “, which decision...arbitration”.

4.5 (Arbitration) Delete all Subparagraphs and Sub-Subparagraphs entirely and replace with: "4.5.1 The Contractor and the Owner shall not be obligated to use arbitration to settle any controversy or Claim arising out of or related to the Contract or the breach thereof. Any provision in any place in the Contract Documents to the effect that either of those parties is bound by arbitration, is void. This Subparagraph 4.5.1 does not affect the Architect's authority as allowed by the Contract Documents."

Add the following new Subparagraph:

4.6 (Dispute resolution process) Any party allowed to use the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) (the “DR process”) shall participate in mediation pursuant to the DR process as a precondition to initiating litigation concerning the dispute. The amount of \$15,000 or more must be at issue before a party may require other parties to participate in the DR process. The costs of the DR process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the Owner, if the Owner is a party to the dispute.

Article 5 (SUBCONTRACTORS)

5.1 (Definitions)

5.1.1 (Subcontractor; Chapter 44A) Delete the first sentence and replace with: "A Subcontractor is a person or entity who is a first tier subcontractor as defined in N.C.G.S. 44A-17. Nothing in this Article 5 shall be construed to affect the extent to which Chapter

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44A applies to the Contract, the Work, or any acts or transactions."

5.1.2 (Subcontractor) After the first sentence, insert: "The term "Sub-subcontractor" includes each person or entity who is a subcontractor of any tier, other than a first tier subcontractor as defined in N.C.G.S. 44A-17."

5.2 (Award of subcontracts and other contracts for portions of the Work)

5.2.1 (Competency) In the fourth line, before "persons or entities", insert: "competent and reliable".

5.2.3 (Adjustment of Contract Sum from change of person or entity) Delete the second sentence and substitute: "The Contract Sum shall be adjusted by the lesser of the following '1' and '2', provided that the subcontract amounts are reached in good faith:

(1) the difference between 'a' and 'b':

(a) the subcontract amount proposed by the person or entity accepted or designated by the Owner and Architect and (b) the subcontract amount proposed by the person or entity recommended by the Contractor;

or (2) the difference between 'a' and 'b':

(a) the subcontract amount proposed by the person or entity accepted or designated by the Owner and Architect and (b) the amount set forth in the schedule of values which is applicable to the Work covered by such subcontract."

5.3 (Subcontractual Relations)

5.3.1 (Subcontractual Relations) In lines 1-2, delete "agreement, written where required for validity" and substitute "written agreement". In lines 11-16, delete: ", and shall allow to the Subcontractor...has against the Owner". In lines 21-24, delete ", and, upon written request...Contract Documents".

5.3.2 (Text to be included in subcontracts) Create a new Subparagraph: "Upon the Owner's request, the Contractor will demonstrate compliance with this Subparagraph 5.3.2. All subcontracts shall include substantially the following:

A. Paragraph 5.3 of the General Conditions of the Contract for Construction (as modified by the Supplementary Conditions) between the Owner (City of Durham) and the Contractor is incorporated by reference into this subcontract. To the extent of the work to be performed by the subcontractor -- (1) the subcontractor is bound to the Contractor by terms of the Owner-Contractor Contract, and (2) the subcontractor assumes toward the Contractor all of the obligations and responsibilities which the Contractor, by the Owner-Contractor Contract, assumes toward the Owner and Architect. The rights of the Owner and Architect under the Owner-Contractor

Contract with respect to the Work to be performed by the subcontractor are preserved and shall be protected so that subcontracting will not prejudice those rights. The Owner, City of Durham, is an intended third party beneficiary of this subcontract.

B. If the Contractor is terminated by the Owner, and even if the Contractor defaults in such a way which would give the subcontractor the right to terminate this subcontract, the subcontractor hereby agrees that, upon written request (by the Owner, or a Contractor substituted in place of the original Contractor, or any surety obligated under bond relating to the Agreement between the Owner and Contractor), the subcontractor will continue to perform its obligations under this subcontract (on the same terms and conditions as apply to this subcontract) for and on account of the Owner, such substitute Contractor, or the surety. If requested by the Owner or surety, the subcontractor will execute a separate document to show its commitment to continue performance pursuant to this subcontract. Assignment is subject to the prior rights of the surety. The Owner shall be responsible to the subcontractor only for those obligations of the Contractor that accrue after the Owner exercises any rights under this section "B".

5.4 (*Contingent assignment of subcontracts*) Delete entirely. Reference is made to Subparagraph 5.3.2.

5.5 (*Furnishing Subcontractor documents*) Create a new Paragraph: "At any time after the Agreement is executed, whether or not notice of termination has been given, Contractor shall upon request of the Owner promptly give the Owner a copy of the entire text of all agreements, (including attachments and exhibits) with Subcontractors, together with all other documents by which any services, materials, equipment, or other goods were ordered by the Contractor, including documents showing the cost, delivery dates, and all terms and conditions (including those relating to ordering and canceling)."

Article 6 (CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS)

6.1 (*Owner's right to perform construction and to award separate contracts*)

6.1.1 (*Reservation of rights*) Delete "and to award...subrogation" from the first sentence. Replace it with: "and to award separate contracts in connection with other portions of the Project, additional work (as contrasted with altered work), or other construction or operations on the site. Nothing herein shall limit or reduce the Owner's right to cause a termination for

convenience."

6.1.3 (*Project Expediter; schedules of the Work*)

Delete the first, second, and third sentences and replace those three sentences with: "If the multi-prime contracting method is used, the Contractor who is awarded the contract for the general work shall be designated the 'Project Expediter', who shall coordinate (and make a record of) the compliance of the other Contractors with their schedules of the Work which they submitted in accordance with Subparagraph 3.10.1. Each Contractor other than the Project Expediter shall keep the Project Expediter fully informed as to the progress of the Work for which it is responsible. The Project Expediter shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement by the Owner, the Project Expediter, and the affected separate Contractor(s); this last sentence applies whether or not the Owner uses its own forces. Where a Contractor (including the Project Expediter) fails to carry out Work in compliance with the Contractor's schedule, the Contractor shall propose a revised schedule to make up the slippage in the schedule. If such proposed revised schedule is approved by the Owner and the Project Expediter, notice of such revisions shall be given to the Architect, and the proposed revised schedule shall replace the previous schedule. The Owner's approval of a revised schedule shall be without prejudice to the Owner's rights and remedies as a result of such work slippage. Direct communications appropriate to carry out this Subparagraph 6.1.3 may be made notwithstanding Subparagraph 4.2.4."

6.2 (*Mutual Responsibility*)

6.2.5 (*Subjects of Claims*) After "in question", insert: ", including under Subparagraph 3.14.2,". Delete "provided...obligations".

6.2.6 (*Duties of Owner and separate contractors regarding cutting and patching*)

Delete entirely and replace with: "If the Owner (with its own forces) or a separate contractor performs construction or operations related to the Project, each shall have the same responsibilities, with respect to its construction and operations, for cutting and patching as are described for the Contractor in Paragraph 3.14."

6.2.7 (*Coordination between various contractors; Owner not liable*) Create a new Subparagraph: "The Contractor must coordinate its Work with that of separate contractors. The Contractor shall not unreasonably impede, hinder, or delay the Owner or any separate contractor. In case of any disputes or coordination problems with the separate contractors, the Contractor shall not look to the

Owner for monetary compensation of any kind or adjustment of the Contract Sum arising therefrom. The Owner makes no warranty as to the conduct of any separate contractor."

6.3 (*Owner's right to clean up*)

Article 7 (*Changes in the Work*)

7.1 (*Changes*)

7.1.1 (*Change Order required*) Add to the end: "Except as permitted in Paragraph 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, none of the following shall be grounds for any increase in the Contract Sum or in the Contract Time:

(a) course of conduct or dealings between the parties; (b) express or implied acceptance of alterations or additions to the Work; or (c) any unjust enrichment accruing to the Owner by any alteration or addition to the Work."

7.1.2 (*Owner alone approves Construction Change Directives*) In line 3, delete "and Architect".

7.1.4 (*Unit prices*) Insert at the beginning: "If unit prices are stated in the Contract Documents, the Contractor shall perform the Work referred to or described by the unit price provisions at the price per unit of the specified measurement for materials, equipment, and services, as needed for the Work. Each unit price the dollar amount that the Contractor deemed adequate, at the time of the submission of its bid or execution of the Change Order agreeing on the unit price, to cover the Contractor's costs, including overhead, and profit to supply the materials, equipment, and services represented by the unit price. The Contract Documents may show the multiplication of a unit price by a specified quantity (which was estimated as needed) in order to calculate the extension, or the "product" in dollars. The Owner is not contractually bound to pay for the estimated quantity of those items, and the Owner does not covenant that the estimated quantity will be used. Instead, the Owner will be contractually bound to pay for the actual quantity properly incorporated in the Work, at the unit price stated in the Contract Documents. It is presumed that any change of quantities (of items to be paid on a unit price basis) in a proposed Change Order or Construction Change Directive will not cause substantial inequity, but to the extent that presumption is overcome, the rest of this Subparagraph 7.1.4 shall apply."

7.2 (*Change Orders*)

7.2.3 (*Change Orders are inclusive*) Create a new Subparagraph: "Agreement on any Change Order shall constitute a final settlement of all

matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. If a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment."

7.3 (*Construction Change Directives*)

7.3.1 (*Owner may issue Construction Change Directives without stating Contract Sum*) Delete the first sentence, and replace with: "A Construction Change Directive is a written order signed by the Owner, through its representative, directing a change in the Work."

7.3.3 (*Method of adjustment to Contract Sum*) Add to the end:

"5 If the Owner deletes substantially all of the Work contemplated by an alternate before five per cent (5%) of the Work under that alternate has been performed, the Contract Sum shall be adjusted as provided in Subparagraph 7.3.12 and not as provided in the last sentence of Subparagraph 7.3.6.

"The methods provided in Subparagraphs 7.3.3.1 and 7.3.3.3 shall not be used unless the other methods in this Subparagraph 7.3.3 are inapplicable or inequitable."

7.3.6 (*Changes in Contract Sum resulting from Construction Change Directive*) In lines 1-3, delete "If the Contractor . . . shall be determined"). Replace with: "If (a) the Contractor does not respond promptly or disagrees with the adjustment or method for adjustment in the Contract Sum, or (b) the Construction Change Directive omits an adjustment in the Contract Sum, or (c) the Construction Change Directive omits a method for adjustment in the Contract Sum, the method and the adjustment shall be determined". In line 7, after "overhead and profit" insert: ", provided that the allowance for overhead and profit collectively shall be no greater than 15% of the net increase in the Contract Sum". 7.3.6.1 (*Certain fringes not reimbursable*) Delete "fringe benefits required by agreement or custom".

7.3.6.4 (*Insurance not reimbursable*) Delete "and insurance".

7.3.10 (*Change Order and Construction Change Directive Costs*) For purposes of this Subparagraph 7.3.10, "Subs" means Subcontractors and/or Sub-subcontractors.

.1 (*Application of 7.3.6*) The costs to be paid for under 7.3.6.1 through 7.3.6.5 shall apply when the additional Work is done by the Contractor and/or by Subs.

.2 (*Overhead and profit*) For purposes of Subparagraph 7.3.6, overhead and profit ("O & P") shall be determined as follows:

Let A = the costs of the Work attributable to the change to the extent that Work is performed by Subs. The Owner shall pay to the Contractor, for the Subs' O & P, an amount equal to 15% of A. The Owner shall pay to the Contractor, for the Contractor's O & P, an amount equal to 7-1/2% of the sum of [A + (15% of A)] (i.e., the Owner shall pay an amount equal to 0.08625 times A.). For example, if A = \$2000, the Owner shall pay to the Contractor \$300 for the Subs' O & P, and \$172.50 for the Contractor's O & P.

.3 (*Overtime*) The Owner shall pay for overtime as a cost under Subparagraphs 7.3.6 and 7.3.7 only if it has specifically authorized such overtime. The Owner shall not pay O & P on any overhead costs, unless specifically agreed to otherwise."

7.3.11 (*No payment without documentation*) The Owner shall not pay for any cost for any Work attributable to the change in the Work or any cost under Subparagraph 7.3.6 or 7.3.7 unless documentation required by the Contract Documents is supplied for that cost. Those required documents include:

.1 For costs under Subparagraph 7.3.6.1, for each person who worked on the additional Work: a statement showing his or her job title, hourly rate paid, other amounts described under Subparagraph 7.3.6.1 that were paid, and the net change in the number of hours worked attributable to the change in the Work.

.2 For costs under Subparagraph 7.3.6.2: dated receipts from the Subcontractors and/or Sub-subcontractors. The receipts must acknowledge the Contractor's payment, identify the materials, supplies, equipment and show the name of the Owner's Project.

.3 For costs under Subparagraph 7.3.6.3: dated receipts from the rental the Subcontractors and/or Sub-subcontractors. The receipts must acknowledge the Contractor's payment, identify the machinery and equipment, and show the name of the Owner's Project, the rental rate, and the number of hours, days, miles, or other basis of the charge. If the Contractor supplies the machinery or equipment, the statement must show the rental rate and the number of hours, days, miles, or other basis of the charge, and the rental rate must not exceed the market rental rate.

.4 For costs under Subparagraph 7.3.6.4, written proof of a net change in the amount paid by the Contractor attributable to the

change in the Work. For bonds, the proof must include the invoice or statement from the surety or its agent showing that it is attributable to the change in the Work.

.5 For costs under Subparagraph 7.4.6.5, for each person who worked on the additional Work: a statement showing his or her job title, method of his or her compensation, and the net change in the number of hours worked attributable to the change in the Work.

7.3.12 (*Adjustment of Contract Sum when substantially all of an alternate is deleted*) If the Owner deletes substantially all of the Work contemplated by an alternate before five percent (5%) of the Work under that alternate has been performed, the Contract Sum shall be adjusted as provided in this Subparagraph 7.3.12 and not pursuant to the last sentence of Subparagraph 7.3.6. The method and the adjustment shall be determined by the Architect as follows: First, the Contract Sum will be reduced by the full amount of the alternate that is deleted. Next, the Contract Sum will be increased to compensate the Contractor for losses that the Contractor cannot avoid, if the Contractor had acted reasonably in making arrangements to do the Work contemplated by the alternate before it was deleted. For example, the Contract Sum may be adjusted to reflect a restocking fee that a Subcontractor charges for goods, but not if the Contractor did not actually order the goods, or if it was not reasonable for the Contractor to have ordered the goods when it did so, or if the restocking fee was not customarily charged by the Subcontractor for those goods, or not to the extent the restocking fee was unreasonable in amount, or if other circumstances exist under which it would be inequitable for the restocking fee to be paid by the Owner.

.1 (*Limitations on adjustment*) The Contract Sum will not be increased to reflect profits that the Contractor, a Subcontractor, or any other person would or might have made if the alternate had not been deleted. The Contract Sum will not be increased to reflect overhead that the Contractor, a Subcontractor, or any other person would or might have incurred if the alternate had not been deleted.

To the extent that the Contractor performed up to five percent of the Work contemplated by the deleted alternate, the Contract Price shall be adjusted for the Work performed as if the Work performed had been the subject of an additive Construction Change Directive.

7.4 (*Minor changes in the Work*)

7.4.1 (*Conferring with Owner*) Add to the end: "Except in case of emergency, the Architect shall

confer with the Owner before ordering a minor change, but this sentence is not intended to give the Contractor the right to delay executing a minor change in order to inquire whether the Owner has been consulted."

Article 8 (TIME)

8.1 (*Definitions*)

8.1.4 (*Measurement of time*) Add to the end: "The day of the act, event, or default after which a period of time begins to run, is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or such legal holiday. As used in the preceding sentence, a 'legal holiday' is a holiday observed by city government of the City of Durham. See City Code Sections 14-16(a) and 14-16(b) for information on such holidays."

8.2 (*Progress and completion*)

8.2.1 (*No Owner's warranty as to Contract Time*) Add to the end: "The Owner does not warrant that the Contract Time is a reasonable period for performing the Work."

8.3 (*Delays and Extensions of time*)

8.3.1 (*Limits on extension of Contract Time*) Add to the end: "A labor dispute to which the Contractor, a Subcontractor, or a Sub-subcontractor is a party or a contributing factor shall not be a ground for an extension of the Contract Time. If performance is or would have been delayed by another cause for which the Contractor, a Subcontractor, or a Sub-subcontractor is responsible, the Contractor shall not be entitled to an extension of Contract Time or any other remedy, compensation, or recovery of any kind for such delay."

8.3.3 (*Limits on adjustment in Contract Sum and Contract Time*) Delete entirely and replace with: "Notwithstanding anything to the contrary in the Contract Documents other than Paragraph 14.1 and other than the A101 signed by the Owner and Contractor, the Contractor's sole remedy for any (1) delay in the commencement, prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar delays and losses (said 1, 2, 3, and 4 being collectively referred to in this Subparagraph 8.3.3 as 'Such Delays'), whether or not Such Delays are foreseeable, shall be an extension of the Contract Time if permitted and granted under Subparagraph 8.3.1 and, to the extent permitted under this Subparagraph 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation

or recovery of any damages under or pursuant to this Subparagraph 8.3.3 in connection with any Such Delays, including consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Contractor shall be permitted an adjustment in the Contract Sum if any of Such Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than the Elimination Period. If the length of the Elimination Period is stated elsewhere in the Contract Documents, that length shall apply; if not, the Elimination Period shall be eighty (80) days. The 'Compensable Delay Time' equals the period of Such Delays minus the Elimination Period. Any adjustment in the Contract Sum pursuant to this Subparagraph 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of the fact that the Compensable Delay Time exceeded the Elimination Period. Direct costs for purposes of this Subparagraph 8.3.3 do not include profit or overhead. To the extent of conflict, the A101 signed by the Owner and Contractor shall control this Subparagraph 8.3.3."

8.3.4 (*Delay damages*) Create a new Subparagraph: "Nothing in Subparagraph 8.3.3 or any other provision of the Contract Documents (including the Owner-Contractor Agreement) is intended to forbid or limit compensable damages for delays caused solely by the Owner or its agent. For purposes of the preceding sentence, 'Owner or its agent' does not include prime contractors or their subcontractors."

Article 9 (PAYMENTS AND COMPLETION)

9.2 (*Schedule of Values*) Change the title to read: (*Schedule of Values; Unit Prices*)

9.2.1 In the first line delete "Before the first Application for Payment" and replace with "Within twenty (20) days after both parties have executed the Agreement".

Add a new Subparagraph:

"9.2.2 (*Unit prices*)

9.2.2.1 Unit prices, if any, shall apply to Change Order Work.

9.2.2.2 In addition to Sub-subparagraph

9.2.2.1, it is agreed:

(a) If unit prices are included in the Contract Documents for Work other than Change Order Work, it is also agreed that the Contract Sum was calculated on the assumption that certain estimated quantities of unit price items will be used in the Work. Those estimated quantities are stated in the Contract Documents. The unit price multiplied by the quantity is referred to as the 'extension.'

(b) If the actual extension of a unit price item is less than the estimated extension, the Contract Sum shall be reduced accordingly. (c) The actual extension of each unit price item shall not exceed the estimated extension for that item unless the Contractor has received advance written approval from the City's Project Manager to exceed the estimated quantity for that item. That approval may be limited in the Project Manager's discretion. If that approval is given, the Contract Sum shall be adjusted as follows: If the actual quantity of a unit price item is more than the estimated quantity, the Contract Sum shall be increased to reflect the difference between the actual and the estimated quantities. If approval is not given, the Contractor shall not be obligated to use the quantity of that unit price item that exceeds the approved quantity, and a Change Order or Construction Change Directive shall be executed to reflect the changes in the Work resulting from the actual quantity of the item that is used. If the Contract Documents explicitly and clearly state that no further approval from the Project Manager or the City is required for the Contractor to exceed the estimated quantity of specified unit price items, then it is agreed that the Contract Sum shall be adjusted to reflect the actual quantities of those items without the necessity of further approval."

9.3 (*Applications for payment*)

9.3.1 In line 2, after "payment" insert: "unless another deadline is provided elsewhere in the Contract Documents,".

9.3.1.2 Delete entirely.

9.4 (*Certificates for payment*)

9.5 (*Decisions to withhold certification*) 9.5.1.3 (*Failure to pay Subcontractors or Suppliers*) Delete entirely.

9.6 (*Progress payments*) 9.6.2 (*Payments to Subcontractors*) Delete entirely, and replace with: 9.6.2 (*Prompt Payments to Subcontractors*)

9.6.2.1 Within 7 days of receipt by the Contractor of each payment from the Owner under this contract, the Contractor shall pay all Subcontractors based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the

Contractor from the Owner under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this Sub-subparagraph 9.6.2.1 directly against the Contractor, but not against the Owner. If the Owner's Project Manager determines that it is appropriate, in order to enforce this Sub-subparagraph 9.6.2.1, the Owner may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor.

9.6.2.2 Nothing in Subparagraph 9.6.2 shall prevent the Contractor at the time of invoicing, application, and certification to the Owner from withholding invoicing, application, and certification to the Owner for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the Subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another Subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage consistent with same terms as those between the Contractor and the Owner.

9.6.2.3 The Owner's Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

9.6.5 Delete "9.6.2,".

9.7 (*Failure of Payment*)

9.7.1 In line 6, delete "or awarded by arbitration".

9.7.2 (*Payments to Owner*) Create a new Subparagraph: "If the Owner is entitled to payment from the Contractor, the Contractor shall make such payment promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to the Owner, or if the Owner incurs any cost or expense to cure any default of the Contractor or to correct defective Work, the Owner may offset such amounts against the Contract Sum and may deduct the amount to which the Owner is entitled from any payment

due from the Owner to the Contractor. Failure to exercise the rights set forth in this Subparagraph 9.7.2 shall not affect the Owner's right such to payments."

9.8 (*Substantial Completion*)

9.8.1 (*Lawfulness of occupation or use*) In line 4, after "can", insert "lawfully".

9.8.1 (*Certificates to be received*) Add to the end: "However, before Substantial Completion can occur, the Owner must receive all certificates of occupancy and other permits, approvals, licenses, and other documents from all governmental authorities that are necessary for the beneficial occupancy and use of the portion to be occupied or utilized."

9.9 (*Partial occupancy or use*)

9.10 (*Final Completion and Final Payment*)

9.10.2 At the end of the first sentence, insert:

", (6) the items required to be delivered to the Architect under Paragraph 3.11.1, (7) the items required under Paragraph 3.19.1, (8) all warranties and guarantees required under the Contract Documents, (9) an assignment of all manufacturer's warranties relating to materials and labor used in the Work, (10) a statement that the Contractor has complied with Subparagraph 9.10.2.1, and (11) all certificates not previously delivered pursuant to Subparagraph 13.5.4".

9.10.2.1 Create a new Sub-Subparagraph: "Before it is entitled to receive final payment, the Contractor shall submit to the Owner the originals of the permits, licenses, certificates, and approvals that the Contractor received pursuant to Subparagraph 3.7.1."

9.10.3 Delete the last sentence.

9.10.4 (*Waiver of Claims*) Add to the end of the first sentence: "A Claim that such a payee has reserved pursuant to Subparagraph 4.3.3 will be waived by acceptance of final payment if not identified as unsettled in the final Application for Payment. Unless the party against whom a Claim is to be made otherwise consents, a Claim that has been reserved before acceptance of final payment is waived unless that Claim is made within sixty days after the claimant has accepted final payment."

ARTICLE 10 (PROTECTION OF PERSONS AND PROPERTY)

10.1 (*Safety precautions and programs*)

10.1.2 (*Asbestos and PCBs; placement of hazardous or toxic materials; duty to prosecute Work*) In the third sentence, delete ", by written agreement...Article 4". Replace with: "As used in this Article 10, the expressions 'rendered harmless' and 'harmless' shall mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards in all applicable laws, statutes, ordinances, codes,

orders, rules, and regulations. Without limiting the preceding sentence, asbestos that is in an encapsulated or non-friable condition when the notice of proceed is issued shall be considered 'harmless'. Unless the Contract Documents specifically require otherwise, the Contractor shall not place at or on the site, or incorporate into the site or the Work, any material which is made partly or wholly of any hazardous or toxic material. If the Contractor has reasonable grounds to believe that the Contract Documents contain such a requirement, the Contractor shall send a written notice to the Owner to that effect before the Contractor places any of such material at or on the site or incorporates into the site or the Work. Notwithstanding all of the preceding sentences of this Subparagraph 10.1.2 or any other part of this Article 10, after the Contractor and the Owner have made appropriate investigation into the materials, if applicable federal and state statutes and regulations permit the Work in the affected area to resume and the Contractor fails or refuses to commence that Work promptly after demand by the Owner, such failure or refusal shall constitute a failure or refusal to do the Work and to supply enough properly skilled workers and proper materials." In the last sentence, delete ", or in accordance ... arbitration under Article 4."

10.1.3 (*Duty to perform Work with asbestos and PCBs*) Add to the end: "unless it is harmless".

10.1.4 (*Indemnification*) Delete entirely.

10.2 (*Safety of Persons and Property*)

10.2.3 (*Safeguards*) Add to the end: "The preceding sentence includes the duty to provide, at the Contractor's sole cost and expense, for all measures necessary to protect all property outside the site against all hazards arising out of the Work."

10.2.4 (*Notice of hazardous materials*) Add to the end: "The Contractor shall give the Owner and Architect reasonable advance notice before using or placing explosives or other hazardous materials or equipment on the site."

10.2.5 (*Owner not responsible for acts of Contractor and others*) Insert after the first sentence: "In lines 10 - 12 of this Subparagraph 10.2.5, the words 'anyone directly or indirectly employed by either of them,' and 'anyone for whose acts either of them may be liable' shall not be construed to include the Contractor, Subcontractors, or Sub-subcontractors or anyone directly or indirectly employed by the Contractor, Subcontractors, or Sub-subcontractors, or anyone for whose acts the Contractor, Subcontractors, or Sub-subcontractors may be liable."

10.2.8 (*Securing Work*) Create a new Subparagraph: "When all or a portion of the

Work is suspended or stopped for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury or damage by any cause."

10.2.9 (*Reports of incidents*) Create a new Subparagraph: "The Contractor shall promptly report in writing to the Owner and Architect all accidents or incidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious property damage is caused, the Contractor shall report the accident or incident immediately by telephone or messenger to the Owner and Architect."

10.3 (*Emergencies*)

10.3.1 After the first sentence, insert: "This Subparagraph 10.3.1 shall not be construed to reduce the Contractor's responsibilities, including those required by the rest of Article 10 and the remainder of the Contract Documents."

Article 11 INSURANCE AND BONDS

11.4.1 (*Bond forms*) Add: The bond forms shall be those provided by the Owner or other forms that the Owner, in its discretion, approves.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 (*Uncovering of Work*)12.1.2 In the last sentence, delete "or a separate contractor". Add to the end: "This Subparagraph 12.1.2 does not apply to the extent that Subparagraph 12.1.1 applies."

12.2 (*Correction of Work*)

12.2.1 Add to the end: "If prior to the date of Substantial Completion, the Contractor, a Subcontractor, or a Sub-subcontractor uses or damages any portion of the Work, including mechanical, electrical, plumbing, or other building systems, machinery, equipment, or other mechanical device, the Contractor, at no expense to the Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of the Contractor with respect to such item in order to obtain a final Certificate for Payment."

12.2.2 In line 8 of the first sentence: after "to do so", insert: "(but in any event, commencing such corrective action within 30 days after receipt of said notice and proceeding promptly to completion)". After the first sentence, insert: "Such a written acceptance is not effective as an acceptance unless it specifically describes the

condition that is not in accordance with the Contract Documents and contains substantially the following statement: 'The Owner accepts [such condition] despite its not being in accordance with the Contract Documents.'"

12.2.4 In the second sentence, delete "from the Architect" and replace with "from the Owner". Add to the end: "The Owner's rights under this Subparagraph 12.2.4 are in addition to, and not in limitation of, the Owner's rights provided elsewhere in the Contract Documents."

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 (*Governing law*)

13.1.1 Delete entirely and replace with: "(Choice of law and venue) The place of the Project is North Carolina. This Contract shall be deemed made in Durham County, North Carolina. This Contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section."

13.3 (*Written notice*)

13.3.1 Delete entirely and replace with: "(Replacement recipient of notices; methods of sending notice; faxing; notice includes request) If a party is notified of a replacement person for purpose of getting notice, then notices afterwards shall be directed to the replacement person. Written notices shall be deemed to have been duly served, made, and received, and receipt thereof completed, if (a) delivered in person to the individual or to that individual's receptionist, or (b) mailed by registered or certified mail to the last business address known to the party giving notice, or (c) faxed to the last fax number known to the party giving notice, provided that the fax transmission must be completed. In addition, written notices to the Owner must be directed to the Owner's representative, provided that if no individual is designated as the Owner's representative, then written notices must be directed to the City Manager. As used in this Paragraph 13.3, the word 'notice' includes 'request'."

13.3.2 (*When notice made*) Create a new Subparagraph: "The notice will be deemed served, made, and received, and receipt thereof completed, on the earlier of: (a) the date delivered in person, or (b) three days after placing in the custody of the U. S. Postal

Service, or (c) the date the fax transmission was completed.

13.3.3 (*Address of surety*) Unless the surety provides a different address as provided in Paragraph 13.3, notice to a surety may be sent to the address shown on the performance bond; if no address for the surety is shown on the performance bond, the surety's address provided by the N. C. Department of Insurance shall suffice; and if the Department of Insurance lacks an address, the last-known address of the attorney-in-fact who signed the performance bond shall suffice.

13.4 (*Rights and remedies*)

13.4.2 (*Waiver of liquidated damages*) If liquidated damages are assessable against the Contractor, the Owner may, in its discretion, waive the imposition of some or all of the liquidated damages against the Contractor. That waiver shall be valid only if done by a writing signed by the City Manager or an Assistant City Manager, and the waiver must refer specifically to "liquidated damages." That waiver shall not constitute an extension of the Contract Time.

13.5 (*Tests and inspections*)

13.5.1 (*Costs of new requirements*) In the last sentence, delete "after bids...concluded" and replace with "after the Agreement has been executed by both parties".

13.5.3 (*Allocation of costs of testing, inspection, and approval*) Add the following to the end: "It shall also bear a portion of the costs of the tests that revealed such failure in an amount determined by the Architect to be reasonably related to the significance of the failure and the reasonableness of ordering the tests, with the Owner bearing the rest of the costs of these tests that revealed such failure. The Contractor shall bear the portion of the cost of testing services required for the Contractor's convenience (e.g., the premium charged for services that are required on short notice) in the Contractor's scheduling and/or performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work that are not the fault of the Owner or Architect."

13.7 (*Commencement of Statutory Limitation Period*) Delete entirely.

13.8 (*EEO Provisions, Equal Opportunity, SDBE*) Create Subparagraphs 13.8.1 and 13.8.2:

"13.8.1 (*EEO Provisions*) During the performance of this Contract the Contractor agrees as follows:

(i) The Contractor shall not discriminate against

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any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (ii) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (iii) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (iv) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (v) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

13.8.2 (*EBOP and Equal Opportunity*) The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Contractor to comply with Article III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this contract, and State law. The Participation Plan submitted in accordance with Article III of Chapter 18 is binding on the Contractor. Section 18-59(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as

specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations. **THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS."**

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 (Termination by the Contractor)

14.1.1 In the 2d line, change "30" to "90".

14.1.1.4 In the 4th line, after "for completion," insert: "including adjustments to the schedule allowed by the Contract Documents".

14.1.2 After "for proven loss" insert: "for Work executed or performed".

14.1.3 Delete entirely.

14.1.4 Create a new Subparagraph: "The notices referred to in this Article 14 shall state the reasons and grounds for the termination. The reasons and grounds for termination by the Contractor set forth in Article 14 are exclusive. Those reasons and grounds shall not constitute reasons or grounds for termination by the Contractor if a substantial cure occurs within seven days after the Owner receives notice of proposed termination."

14.1.5 Create a new Subparagraph: "If an extension of Contract Time has been granted because of a circumstance set forth in Subparagraph 14.1.1, the period of that extension shall be not be counted towards (a) the 90-day period created in the first clause of Subparagraph 14.1.1 or (b) the days described in Sub-subparagraph 14.1.1.4."

14.2 (Termination by the Owner for cause)

14.2.1.2 (Failure to pay Subcontractors) Delete entirely.

14.2.2 Delete ", upon certification by the Architect that sufficient cause exists to justify such action,".

14.2.2 Add to the end: "Non-exercise of the Owner's rights under this Subparagraph 14.2.2 shall not be considered a failure to mitigate damages, nor shall it be the grounds for any claim against the Owner. In the notice, the Owner may specify when the termination is effective or it may state that the termination shall be effective upon additional notice as specified in the notice. "

14.3 (Suspension by the Owner for Convenience) 14.3.2 and 14.3.3 Delete entirely. Attention is directed to 8.3.3.

14.4 (Termination for Convenience) Create a new Paragraph:

14.4.1 (Method of termination) The Owner may terminate this Contract without cause upon at least seven (7) days' written notice to the Contractor and the Contractor's surety, if any. In that notice (the "First Notice"), the Owner may specify when the termination is effective or it may state that the termination shall be effective upon additional notice as specified in the First Notice.

14.4.2 (Adjustment of Contract Sum) If the Owner exercises its right to terminate pursuant to this Paragraph 14.4, the Contract Sum shall be adjusted so that the Owner shall be obligated to pay only for the Work performed before the effective date of termination. Subparagraph 14.2.4 shall also apply. .

Add the following new Subparagraph:

14.4.3 (Goods Intended for the Work) With respect to goods that the Contractor has ordered that are demonstrably intended for the Work --

.1 Contractor shall, as soon as practicable after receiving a notice from Owner pursuant to Paragraph 14.4.1, give the Owner written notice of the entire text of the contracts and other documents by which the goods were ordered, showing the cost, delivery dates, and all terms and conditions (including those relating to ordering and canceling).

.2 The Owner shall have the following options:

(a) to direct the Contractor to cancel any one or more orders, in which case the Owner shall be liable for cancellation and restocking charges and other charges properly attributable to the cancellation; or

(b) to direct the Contractor to keep any one or more orders in effect and/or to assign any one or more orders to the Owner, in which case the Owner shall be responsible for bearing the costs of the order.

3. Within 10 days of the Owner's receiving notice under .1 above, the Owner shall give the Contractor notice of which options it exercises under .2. The Owner shall bear the losses suffered by the Contractor with respect to orders for which the Owner fails to give that notice within that 10-day period as if the Contractor had taken whatever action as is appropriate to keep the costs to the Owner at a minimum.

.4 The Contractor and the Owner shall cooperate in good faith to carry out the

provisions of this Subparagraph 14.4.1
efficiently and without imposing unnecessary
costs on either party.

.5 Notices given under this Subparagraph
14.4.1 shall comply with Subparagraph
13.3.1 and shall be given by fax (pursuant to
13.3.1(c)) and also by either 13.3(a) or (b).

----- end of Supplementary Conditions -----